

that "it would have been obvious to one of ordinary skill in the art to substitute the second leak preventer of Sugiyama for the second leak preventer taught by [Ando] because the liquid impermeable second leak preventer taught by [Ando] provides a simple and efficient mechanism for removing and disposing of soft stools as taught by [Ando] throughout the disclosure," citing paragraphs [0001] - [0011] of Ando. The combination of Sugiyama and Ando, as alleged in the Office Action, would not have been obvious at least for the following reasons.

The Office Action alleges that Sugiyama's top sheet 16 discloses the second leak preventer of claim 1 except that Sugiyama's top sheet 16 includes a perforation (feces separator opening 17). The Office Action alleges that it would have been obvious to replace Sugiyama's top sheet 16 with Sugiyama's excretion treating sheet 5, for the reasons discussed above. But, doing so would change the principle of operation of Sugiyama because feces would no longer be able to pass through feces separator opening 17. Sugiyama states that "the purpose of the present invention is to provide an absorptive product where the urine and stools can be handled separately, skin problems like diaper rash which are caused by the feces are minimized, and where the feces alone can easily be disposed without getting the hands dirty." (Sugiyama at col. 3, lines 16-20.) Sugiyama seeks to separate urine and feces and this is accomplished, in large part, by feces separator opening 17. Removing feces separator opening 17 would change the principle way in which Sugiyama operates. Thus, the proposed modification of Sugiyama improperly changes the principle of operation of Sugiyama and would not have been obvious because a modification that changes the principle of operation of the primary reference would not have been obvious. See MPEP §2143.01(VI).

Also, the proposed modification cannot render the prior art unsatisfactory for its intended purpose. See MPEP §2143.01(V). Sugiyama states that "in order to prevent the mixing of feces and urine, and also to prevent the adherence of feces to the buttocks, a diaper

is proposed which is constructed such that openings are made in the top sheet and the skin contact sheet of the diaper so that the feces can be moved to the outside, and the urine and the feces can remain separated." Sugiyama at col. 1, line 63 - col. 2, line 1 (emphasis added). "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." See MPEP §2143.01(V) citing *In re Gordon*, 733 F.2d 900, 221 (Fed. Cir. 1984). By replacing Sugiyama's top sheet 16 with Ando's excretion treating sheet 5, effectively removing feces separator opening 17, Sugiyama would be rendered unsatisfactory for its intended purpose of keeping feces separated from urine. Sugiyama states at col. 8, lines 65-66 that Sugiyama's structure "forms a space 25 for storing the feces between the top sheet 16 and the back sheet 13." By effectively removing feces separator opening 17 as proposed in the Office Action, this intended purpose would no longer be possible. Such a modification renders Sugiyama unsatisfactory for its intended purpose and would not have been obvious.

Further, Sugiyama teaches away from using a second leak preventer that does not include any perforation. Sugiyama at col. 1, line 22 - col. 3, line 20 discusses the state of Sugiyama's prior art and how the mixing of urine and feces is not desirable. Sugiyama goes on to explain how each of the listed references have openings to prevent the mixture of urine and feces but that each is deficient. Sugiyama then explains that Sugiyama's invention does prevent the mixing of urine and feces. Thus, Sugiyama clearly teaches that an opening in Sugiyama's top sheet 16 (alleged second leak preventer) is necessary. Thus, Sugiyama clearly teaches away from a second leak preventer without a feces separator opening, i.e., teaches away from using Ando's excretion treating sheet 5. The prior art must be considered in its entirety, including disclosures that teach away from the claims. See MPEP §2143.043(VI).

For at least the reasons discussed above, the combination of Sugiyama and Ando would not have been obvious. Claims 2-11 are patentable by reason of their dependency from independent claim 1, as well as for the additional features they recite. Applicants respectfully request withdrawal of the rejection.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

  
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Attachment:

Petition for Extension of Time

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